

EXHIBIT “D”

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
FRANKLIN BUONO,

PLAINTIFF,

Vs.

CASE NO.
1:17-cv-05915

POSEIDON AIR SYSTEMS, et al.,

DEFENDANTS.
-----X

DATE: July 30, 2018

TIME: 10:20 A.M.

VIDEOTAPED TELECONFERENCED DEPOSITION

of the Defendant, WORTHINGTON INDUSTRIES,
INC., by a witness, JAMES M. GETTER, taken
by the respective parties, pursuant to the
Rules of Civil Procedure, held at the
offices of Worthington Industries, 200 Old
Wilson Bridge Road, Columbus, Ohio 43085,
taken before me, Monica K. McBee, a Notary
Public in and for the State of Ohio.

1

2 A P P E A R A N C E S:

3

4 FINKELSTEIN & PARTNERS, LLP
Attorneys for the Plaintiff
5 1279 Route 300
P.O. Box 1111
6 Newburgh, New York 12551
BY: KENNETH B. FROMSON, ESQ.
7 (Via teleconference)

8

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BY: SHELLEY A. MOLINEAUX, ESQ.
12 (Via teleconference)
-and-
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15

16

WORTHINGTON INDUSTRIES, INC.
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20

21 (Appearances continued on the following
page.)
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A P P E A R A N C E S: (Continued)

SHOOK, HARDY & BACON, LLP
Attorneys for the Defendant
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SUED AS ANSUL, INCORPORATED AND TYCO
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By: SANDRA R. STIGALL, ESQ.
(Via teleconference)
Sstigall@shb.com

ALSO PRESENT:
Robert L. Miller, Videographer

* * *

1

2 F E D E R A L S T I P U L A T I O N S

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4

5 IT IS HEREBY STIPULATED AND AGREED by and
6 between the counsel for the respective
7 parties herein that the sealing, filing and
8 certification of the within deposition be
9 waived; that the original of the deposition
10 may be signed and sworn to by the witness
11 before anyone authorized to administer an
12 oath, with the same effect as if signed
13 before a Judge of the Court; that an
14 unsigned copy of the deposition may be used
15 with the same force and effect as if signed
16 by the witness, 30 days after service of
17 the original & 1 copy of same upon counsel
18 for the witness.

19

20 IT IS FURTHER STIPULATED AND AGREED that
21 all objections except as to form, are
22 reserved to the time of trial.

23

24

* * * *

25

1 J. GETTER

2 THE VIDEOGRAPHER: We are on
3 the record.

4 J A M E S M. G E T T E R, of lawful
5 age, Witness herein, having been first duly
6 cautioned and sworn, as hereinafter
7 certified, was examined and said as
8 follows:

9 CROSS-EXAMINATION BY
10 MR. FROMSON:

11 Q. Good morning, Mr. Getter. How
12 are you today?

13 A. Very good. And yourself?

14 Q. I am well. Thank you for the
15 accommodation of appearing by video today.
16 I very much appreciate that, and I don't
17 anticipate that we will be very long on
18 this business day.

19 My full name is Ken Fromson. I
20 represent the plaintiff in this case,
21 Franklin Buono, related to a lawsuit he has
22 brought stemming from injuries he suffered
23 back on February 12th, 2016. Can you hear
24 me okay?

25 A. Yes, I can.

1 J. GETTER

2 Q. Fantastic. I would ask that
3 you let me finish my question in its
4 entirety before you answer the question,
5 such that the court reporter and the
6 videographer have a clear record for us
7 today. If at any time you don't understand
8 my question, you let me know, and I will be
9 happy to rephrase it.

10 Please keep all your answers
11 verbal, as opposed to a nod of the head or
12 a shrug of the shoulders. And if you need
13 a break at any time, you let us know, and
14 we will accommodate you. Is that fair?

15 A. Yes.

16 Q. And I will try to keep my voice
17 up, and you please do the same for the
18 benefit of all participants here today,
19 okay?

20 A. Okay.

21 Q. Mr. Getter, can you please tell
22 us by whom you are currently employed?

23 A. Worthington Industries.

24 (Thereupon, Plaintiff's Exhibit

25 No. 1, three-page document titled

1 J. GETTER

2 Affidavit of Jim Getter, was marked
3 for purposes of identification.)

4 Q. And at some point earlier than
5 today, did you provide an affidavit related
6 to your work and position at Worthington?

7 A. Yes.

8 Q. And you do have a copy of that
9 affidavit before you here today?

10 A. Yes, I do.

11 Q. That's been marked as Exhibit 1
12 for today's deposition; is that true?

13 A. Yes.

14 Q. And is that your full and
15 complete affidavit that you prepared in
16 relation to this case?

17 A. Yes.

18 Q. Focusing your attention to the
19 end of the affidavit, do you see a
20 signature line?

21 A. Yes.

22 Q. And is that your signature at
23 the end of the affidavit, which is marked
24 as Exhibit 1?

25 A. Yes, it is.

1 J. GETTER

2 Q. And did you -- did you read
3 that affidavit before you signed it?

4 A. Yes, I did.

5 Q. And was it fair and accurate to
6 the best of your knowledge when you signed
7 it?

8 A. Yes.

9 Q. And did you, in fact, sign it
10 on May 4th, 2018, before a notary?

11 A. Not before a notary, but I did
12 sign it, yes.

13 Q. And in terms of your position
14 at Worthington, for approximately how long
15 have you been employed by Worthington?

16 A. Been employed by Worthington
17 since 1992, approximately twenty-six years.

18 Q. What is your date of birth, Mr.
19 Getter?

20 A. [REDACTED] 1957.

21 Q. That makes you how young today?

22 A. Sixty years old, sixty years
23 young.

24 Q. All right, thank you. And
25 generally speaking, what is your

1 J. GETTER

2 educational background?

3 A. A high school education, many
4 college degrees, forty -- approximately
5 forty-two years of experience in designing
6 pressure vessels similar to this and
7 others.

8 Q. Can you give me a breakdown of
9 your college degrees?

10 A. I do not have a college degree.
11 I have many college courses.

12 Q. Do you hold -- do what --
13 withdrawn, I'm sorry. What certifications,
14 if any, do you have in your industry in
15 terms of work with industrial products such
16 as these cylinders?

17 A. There is no certification
18 requirement for DOT type vessels,
19 cylinders. It's by job experience.

20 Q. Do you have --

21 A. I say it's by job experience,
22 and then also Worthington itself certifies
23 me as being capable of doing this work.

24 Q. So when you reference -- let me
25 withdraw that. You are a senior product

1 J. GETTER

2 design engineer, correct?

3 A. Correct.

4 Q. Outside of your job experience,
5 do you have any formal education in the
6 forum of design engineering?

7 A. As I said before, I do not have
8 a degree, but I have many classes, college
9 classes in AS -- in engineering. I have
10 also taken many design -- or many classes
11 in design of ASME or similar type tanks. I
12 also serve on several committees for
13 writing standards, et cetera. I also teach
14 the new young engineers DOT, ASME, and
15 similar requirements for regulatory.

16 Q. When you referenced ASME, in
17 terms of the acronym, could you educate us
18 on what the acronym stands for?

19 A. ASME is not related to this
20 cylinder, but it's others. ASME is the
21 American Society of Mechanical Engineers.
22 It's typically used for ground storage type
23 tanks. DOT is for transportable tanks. In
24 this case, this tank was built to the DOT
25 requirements, which are written by the

1 J. GETTER

2 federal government.

3 Q. Are you a member of the
4 American Society of Mechanical Engineers?

5 A. Yes, I am.

6 Q. And for approximately how long?

7 A. Thirty, thirty-five years.

8 Q. And when you referenced that
9 you teach others in relation to standards
10 of ASME, is that within Worthington or is
11 that something outside of Worthington that
12 you participate in that type of teaching --

13 A. The teaching that --

14 Q. -- or both?

15 A. I am sorry. The teaching that
16 I do is all within Worthington.

17 Q. Other than ASME, are there
18 other professional associations in the
19 context of engineering to which you belong?

20 A. Yes, I am a member of a
21 national board, the National Board
22 Inspection Code Committee, writing
23 inspection requirements for tanks. I am
24 also a member of PVMA, which is a Pressure
25 Vessel Manufacturer's Association. I am

1 J. GETTER

2 also a member of CAN, which is a Canadian
3 standards association for auto gas tanks.

4 Q. Any others that you can recall?

5 A. Not that I can recall.

6 Q. Would you happen to have this
7 type of information on a resume or CV, such
8 that if we asked counsel for you to give it
9 to them, you would be able to provide them
10 with your credentials?

11 A. I would have to create the
12 resume. I do not have a current -- I do
13 not have a current resume.

14 Q. Using February of 2016 as a
15 guide, can you tell us for how long before
16 2016 you were a member of ASME?

17 A. That would have been, what, two
18 years ago. So anywhere from twenty-eight
19 to thirty-three years, somewhere in there.

20 Q. Similarly, for the National
21 Board of Inspections that you referenced,
22 for how long have you been a member?

23 A. I have been a member there
24 approximately twelve years.

25 Q. And as to the TVM or was it

1 J. GETTER

2 TVA? I forgot, I am sorry.

3 A. That's fine. It's PVMA, which
4 is Pressure Vessel Manufacturer's
5 Association. I have been a member there
6 for close to twenty-five years.

7 Q. And as far as the colleges
8 where you took courses, is that a long list
9 or would you be able to summarize the
10 colleges in which you took courses related
11 to, you know, engineering and design?

12 A. It's been quite a few years
13 ago, but they were courses through Sinclair
14 Community College in the beginning. I took
15 courses through the Arizona online program.
16 I also took courses at the University of
17 Wisconsin.

18 Q. Now, let me focus you again to
19 your affidavit. You have that in front of
20 you, correct?

21 A. Yes, I do.

22 Q. Can you summarize for us your
23 responsibilities as a senior product design
24 engineer at Worthington?

25 A. I am responsible for the design

1 J. GETTER

2 of our industrial products, which are not
3 limited to, but they are limited to propane
4 cylinders, fire suppressant cylinders,
5 refrigerant cylinders, et cetera, making
6 sure that they meet the regulatory and
7 customer specifications. My duties include
8 drawings, calculations, regulatory
9 compliance, and management of the new
10 product side of the manufacturing process.

11 Q. As far as the manufacturing
12 process and as part of your duties, are you
13 familiar with how Worthington stamps its
14 cylinders and what those stamps mean?

15 A. Yes, I am.

16 Q. As it pertains to this
17 particular case and the Worthington
18 cylinder that was involved in the event for
19 which OSHA did an inspection, did you see
20 the subject photos that were taken by OSHA
21 in this case?

22 A. Yes, I did.

23 Q. And in reviewing those
24 photographs, did you confirm the markings
25 on the subject cylinder that was involved

1 J. GETTER

2 in this case?

3 A. Yes, I did.

4 Q. And what did you confirm those
5 markings to be?

6 A. There were several markings on
7 the cylinder, one of which is WORTHJ, which
8 is an inspector's symbol for the facility
9 where these tanks -- these cylinders were
10 produced. The 08, space, 98 is the month
11 and year of production. So that would have
12 been August of 1998.

13 DOT 4BW is the Department of
14 Transportation standard for these
15 cylinders, which is a three-piece type
16 cylinder that these are made from. The 225
17 is the marked service pressure for these
18 cylinders. The M4543 is the registered
19 manufacturer's symbol for the facility
20 where these cylinders were produced.

21 Q. As it relates to those
22 markings, did they verify for you a certain
23 level of pressure --

24 A. Yes.

25 Q. -- for which the cylinder had

1 J. GETTER

2 been tested?

3 A. Yes, that's the 225 PSI, and
4 that's the direction from DOT on how to
5 mark the pressure on the cylinder.

6 Q. Now, as it pertained to this
7 particular cylinder at issue in this case,
8 did you have an understanding as to who or
9 what entity had requested the manufacture
10 of this particular cylinder for purchase?

11 A. Yes, it was --

12 MS. STIGALL: Objection,
13 foundation.

14 Q. I'll rephrase the question, all
15 right? I want to reference your attention
16 to paragraph number five of your affidavit.
17 Do you see it?

18 A. Yes, I do.

19 Q. Can you simply read that into
20 the record?

21 A. Pyro Chem originally --

22 MS. STIGALL: Objection,
23 foundation.

24 Q. Go ahead, Mr. Getter, from the
25 beginning.

1 J. GETTER

2 A. Okay. Pyro Chem originally
3 requested this cylinder from Worthington as
4 a component of their fire suppressant
5 system.

6 Q. Mr. Getter, do you have an
7 understanding as to whether an entity had
8 requested this particular Worthington
9 cylinder as a component for a fire
10 suppression system?

11 MS. STIGALL: Same objection,
12 foundation.

13 Q. You can answer.

14 A. I don't understand the first
15 part your question.

16 Q. Okay. What I am getting at,
17 and I will try to ask it in a better way,
18 is how you came to learn of the fact that
19 you put in paragraph five, okay?

20 A. Pyro --

21 Q. So let me ask it again, you
22 know. All right. Do you have an
23 understanding that Pyro Chem -- let me
24 withdraw that. After I ask a question, you
25 may hear an objection from any of the other

1 J. GETTER

2 attorneys on the line. So let them put
3 their objection on the record, and then you
4 can answer the question, okay?

5 A. Okay.

6 Q. All right. So do you have an
7 understanding as to who or what entity
8 requested this cylinder from Worthington as
9 a component of a fire suppression system?

10 MS. STIGALL: Foundation,
11 please. Thank you.

12 THE WITNESS: Pyro Chem
13 contacted --

14 Q. You can --

15 A. I was going to say Pyro Chem
16 contacted me about these cylinders and the
17 design of them.

18 Q. All right, let me stop you
19 there. Did there come a time before 2016
20 that Pyro Chem contacted you about these
21 particular Worthington cylinders that you
22 described earlier?

23 A. Yes, in 1994.

24 Q. Can you describe to the best of
25 your recollection what was requested?

1 J. GETTER

2 A. Pyro Chem requested us to
3 design tanks or cylinders for them in
4 accordance with their requirements for fire
5 suppression systems, and there were several
6 models of cylinders that they requested us
7 to -- to create design models for them.
8 They were purchasing these from a different
9 company at that time and were looking for a
10 new source for these cylinders.

11 Q. Do you on behalf of
12 Worthington, as well as Worthington itself,
13 do you possess any of the written
14 communications, assuming there were any?

15 A. No, I do not.

16 Q. Do you have a recollection of
17 what would have been communicated in terms
18 of whether it was on the phone or in
19 writing or some other way?

20 A. It would have -- they would
21 have -- to the best of my knowledge and
22 memory, again, this was close to
23 twenty-five years ago, they would have sent
24 me drawings from the previous supplier
25 looking for something similar to what they

1 J. GETTER

2 were supplying in the past or purchasing in
3 the past. And we created drawings of what
4 we could supply, and those were sent to
5 them for their approval.

6 Q. Was there any type of custom or
7 practice about which you are aware in terms
8 of what period of time Worthington received
9 those communications in the usual course of
10 business?

11 A. Yes, Worthington has a document
12 storage and time period for each type of
13 document, how long we are to keep those in
14 our files.

15 Q. So that would be -- what was
16 the time period for such a document
17 retention policy?

18 A. I don't remember what it is for
19 this. It certainly is much less than where
20 we are today. Those files were purged
21 many, many years ago.

22 Q. When you reference the term
23 fire suppression cylinder, can you educate
24 us on what that means?

25 A. Fire suppressant cylinder or

1 J. GETTER

2 application system is different than a fire
3 extinguisher. A fire extinguisher is what
4 would be mounted on the wall in your office
5 or that you would use in your home. A fire
6 suppression system would be part of a
7 system that's in a building for putting out
8 a fire, whether it's in a kitchen in a
9 grease hood where you have got nozzles and
10 you have got a cylinder that's someplace
11 else that's piped to those nozzles or in
12 your building where you are sitting, you
13 probably have sprinklers.

14 That's a different type of fire
15 suppression system. And that would be
16 water, if you will. So there is many
17 different types of chemicals or products
18 that can be used as a fire suppression
19 medium. And the system is just a system
20 for dispensing that product.

21 Q. You reference that Worthington
22 would have provided drawings. And I would
23 ask you to take a look at Exhibit 2 and
24 Exhibit 3 here this morning and tell us
25 whether these are copies or exemplars of

1 J. GETTER

2 those drawings.

3 (Thereupon, Plaintiff's Exhibit
4 No. 2, a Worthington Cylinder
5 drawing, Bates labeled WORTH00001,
6 was marked for purposes of
7 identification.)

8 (Thereupon, Plaintiff's Exhibit
9 No. 3, a Worthington Cylinder
10 drawing, Bates labeled WORTH00002,
11 was marked for purposes of
12 identification.)

13 THE WITNESS: Yes, they are.

14 Q. I would like you to take a look
15 at Exhibit 2, for starters. And can you
16 take us through the diagram to explain to
17 us what each of the boxes are and what they
18 represent?

19 A. Certainly.

20 MR. ERGO: I am going to
21 object. It calls for a narrative.

22 Q. I will ask it more -- I will
23 ask it in a more limited fashion. What is
24 Exhibit 2?

25 A. Exhibit 2 is the drawing of the

1 J. GETTER

2 cylinder itself.

3 Q. And is this a document that's
4 kept by Worthington Cylinder, a subsidiary
5 of Worthington Industries, Incorporated, as
6 -- in its usual course of business?

7 A. Yes, this is kept in our
8 archive file.

9 Q. And for what purpose was it
10 implemented? In other words, for what
11 reason was it made?

12 A. It was made for production so
13 they would know how to make the cylinder
14 that Pyro Chem was requiring -- requesting.

15 Q. And who was the entity that
16 handled the production?

17 A. The production was by
18 Worthington Cylinders or Worthington
19 Industries.

20 Q. What is the box in the top
21 left-hand corner under the acronym REVS?
22 What does that stand for?

23 A. That stands for revisions.
24 That's the different revisions. That stop
25 section is revisions that were made to this

1 J. GETTER

2 drawing or changes to this drawing.

3 Q. And so in the chronology of
4 events to know which drawing we are looking
5 at, is there a way to determine how many
6 revisions there were?

7 A. Yes. In the very top row,
8 there is a letter with a circle around it.
9 That's the chronological order of the
10 changes that were made to the drawing. In
11 this case, it started at A and ended at E.

12 Q. And is there a way to tell from
13 the document what the revisions were?

14 A. Yes. We have a short synopsis
15 in the block below the letter, and it's a
16 synopsis of what the change was.

17 Q. Does it indicate -- do any of
18 these short synopses indicate who was the
19 source of the revision? In other words,
20 was it a revision that was implemented
21 based upon Worthington versus someone who
22 was requesting the tanks?

23 A. No.

24 Q. And so if we look to Box A
25 related to the revision, can you tell us

1 J. GETTER

2 what was the revision?

3 A. That revision was to a change
4 in the height of the foot ring. Pyro Chem
5 would have requested us to make the foot
6 ring taller to make the cylinder sit taller
7 for some reason. So we changed it from a
8 two-inch tall foot ring to a
9 two-and-a-half-inch tall foot ring.

10 Q. What is it about that synopsis
11 that leads you to believe it was a request
12 by Pyro Chem?

13 A. Because we would have no reason
14 to make that change on our own. We could
15 have supplied it either with a two inch or
16 two and a half inch, either way.

17 Q. Can you look at the next
18 revision, which is under the letter B?

19 A. Yes. Under here, the working
20 pressure and the specification was 175, and
21 the test pressure was 350. So there would
22 have been a request from Pyro Chem to
23 change the service pressure on this
24 cylinder from a 175 PSI to a 225 PSI, which
25 also required a test pressure change from

1 J. GETTER

2 three fifty PSI to 450 PSI.

3 Q. And was it your understanding
4 that such a revision was put into place?

5 A. Yes.

6 Q. And as to the revision letter
7 B, can you summarize for us what that was?

8 A. B? I thought I just described
9 that.

10 Q. I am sorry, I thought I said C.
11 Look to letter C.

12 A. C is --

13 Q. And tell us what was the nature
14 of the revision.

15 A. I am sorry, yes. C was adding
16 drawing numbers. So there would have been
17 a couple drawing numbers that would have
18 been added in the course of creating this
19 design with Pyro Chem's requirements. So
20 the initial drawings would not have had
21 drawing numbers on them.

22 Q. And by whose request would that
23 have been done?

24 A. That would have been our
25 request.

1 J. GETTER

2 Q. As to letter D, as in dog, what
3 was the revision?

4 A. Revision D was adding a
5 geometric tolerance, which is a tolerance
6 for -- in this case, the tolerance on the
7 verticality of the cylinder, so how
8 straight does the cylinder --

9 Q. I am sorry. Did you complete
10 your answer?

11 A. I said that was the geometric
12 tolerance for how vertical the cylinder --
13 how straight the cylinder stood up.

14 Q. By whose request was that
15 revision made?

16 A. That would have been a Pyro
17 Chem request, also.

18 Q. And then letter E, as in egg,
19 what was the nature of the revision?

20 A. E was adding the final part
21 numbers and the approval for -- to begin
22 production.

23 Q. And by whose request was that
24 done?

25 A. That would have been both Pyro

1 J. GETTER

2 Chem and us. Pyro Chem would have been --
3 they approved this design for production,
4 and then us would have been adding the
5 final part numbers or drawing numbers.

6 Q. Now, referencing Exhibit 3, you
7 have that in front of you, correct?

8 A. Yes, I do.

9 Q. And what is Exhibit 3?

10 A. Exhibit 3 is a stamping layout.

11 Q. Is it a stamping layout for the
12 subject cylinder that was involved in this
13 case?

14 A. Yes, it's for the top head
15 stamping of this cylinder.

16 Q. To what extent do Exhibit 2 and
17 Exhibit 3 go together?

18 A. 2 is the drawing for our
19 production facility so they know how the
20 cylinder is supposed to be put together. 3
21 is for our facility for the stamping layout
22 so they know how to stamp the top head for
23 the required markings.

24 Q. And earlier I asked you very
25 procedural questions about whether this was

1 J. GETTER

2 a business record, so let me ask you the
3 same for Exhibit 3. Is Exhibit 3 a
4 document that's kept in the usual course of
5 business by your employer, Worthington?

6 A. Yes, it is. It is also kept --

7 Q. And is this particular -- go
8 ahead, I'm sorry.

9 A. I would say this is also
10 retained in our archive file.

11 Q. And this pertains to the actual
12 tank that was involved in the event,
13 correct?

14 A. Correct.

15 Q. Now, let's look to the
16 revisions on the top left corner of Exhibit
17 3. Do you see revision letter A?

18 A. Yes.

19 Q. And what was the nature of that
20 revision?

21 A. We changed the serial number
22 suffix, and then we added a drawing number.

23 Q. For what reason would that have
24 been done, if you know?

25 A. It would have been our request.

1 J. GETTER

2 We use the serial number suffix to
3 designate the type of cylinder that it is.
4 In other words, the diameter, the water
5 capacity pressure, we separate those out
6 into separate groups.

7 Q. And then revision letter B,
8 what was the nature of revision letter B?

9 A. Again, it was a change in
10 serial number suffix, where it was TS,
11 which stood for test sample. So we would
12 have made --

13 Q. As far as the -- I am so sorry.
14 Can you repeat that?

15 A. Yes. I would say that we
16 produced sample cylinders in the beginning
17 for Pyro Chem to test in their system and
18 also for UL certification.

19 Q. As far as the initials that are
20 in each of the revision box, do the letters
21 JHN pertain to an individual?

22 A. Yes, they do.

23 Q. Who is that?

24 A. His name was John. He was one
25 of the people -- one of the guys that

1 J. GETTER

2 worked with me on creating drawings.

3 Q. His last name is what?

4 A. I don't remember his last name,
5 I apologize.

6 Q. Is he still employed by
7 Worthington?

8 A. No, he is not.

9 Q. Do you know generally the
10 nature of his leaving Worthington, whether
11 it was by retirement or something else?

12 A. I believe he went on to another
13 job at a different company.

14 Q. How about the initials JMG, can
15 you identify that person?

16 A. That is myself.

17 (Thereupon, Plaintiff's Exhibit
18 No. 4, a document titled Inspector's
19 Report, was marked for purposes of
20 identification.)

21 Q. Thank you. Take a look at
22 Exhibit 4. Let me know when you have that
23 in front of you.

24 A. Which one was Exhibit 4, that
25 was the inspector's report?

1 J. GETTER

2 Q. Yes, sir.

3 A. I have it, I'm sorry.

4 Q. All right. So in front of you
5 is Exhibit 4, inspector's report. Can you
6 identify -- what is this document?

7 A. This is a document that's
8 required by DOT or the federal government
9 to describe the cylinders itself and what
10 they were made from, the testing that was
11 completed on them, et cetera.

12 Q. Who made this report?

13 A. It would have been generated by
14 our quality control manager at the time.

15 Q. And who was Melissa
16 Dingus-Luoma?

17 A. She was a quality manager at
18 that time at the facility.

19 Q. And does this inspector's
20 report provide us with an inspection
21 related to the particular cylinder in this
22 case?

23 A. Yes, it does.

24 Q. How do you know that?

25 A. By the serial number. About a

1 J. GETTER

2 third of the way down, there is a line that
3 says serial numbers, and this report covers
4 a range of serial numbers for cylinders.

5 Q. And can you educate us on what
6 you can tell from looking at the serial
7 numbers that allows you to confirm that
8 this inspection pertained to the particular
9 cylinder in this case?

10 A. In the inspector's report, one
11 of -- yes. In the inspector's -- or excuse
12 me, in the OSHA report, there is a photo
13 that shows the top head of the cylinder,
14 which shows the marking and the serial
15 number, and it is within this range of
16 numbers.

17 Q. And other than the serial
18 number, were there other DOT references or
19 manufacturing references that also
20 confirmed it was the same tank?

21 A. Yes, there is.

22 Q. Can you summarize those?

23 A. Yes. The specification, which
24 is the DOT-4 BW225, which is stamped in the
25 top head of the cylinder. There is also

1 J. GETTER

2 the inspector's mark, WORTHJ. There is the
3 identifying symbol, which is our registered
4 symbol, which is M4543. There is also the
5 test date, which was August of 1998. And
6 there was no additional markings stamped on
7 this cylinder. And we talked about this
8 earlier, also.

9 (Thereupon, Plaintiff's Exhibit
10 No. 5, a document titled Record of
11 Chemical Analysis of Material For
12 Cylinders, was marked for purposes of
13 identification.)

14 Q. Take a look at Exhibit 5. Let
15 me know when you have that in front of you.

16 A. I have that in front of me.

17 Q. And it's identified with a
18 title, record of chemical analysis of
19 material for cylinders. Can you identify
20 -- what is this document?

21 A. Yes, this is the document that
22 lists the -- lists the heats of material
23 that were used for the construction of
24 these cylinders. It lists the heat number
25 that was used. It lists -- the LTV was the

1 J. GETTER

2 supplier of the material. It tells you
3 that there was a check analysis completed
4 on the material, and then it describes the
5 chemistry that was discovered in that check
6 analysis.

7 Q. Was this a document that was
8 prepared by Worthington?

9 A. Yes.

10 Q. And is this a document that is
11 kept in the ordinary course of business by
12 Worthington currently?

13 A. Yes.

14 Q. Are you able to confirm whether
15 this record of chemical analysis
16 corresponds to the subject cylinder in this
17 case?

18 A. Yes, based on the serial
19 numbers.

20 Q. And you referenced the serial
21 numbers. Those are listed on the top of
22 the page, correct?

23 A. Yes, they are.

24 Q. And they are also listed in the
25 chart. Do you see that?

1 J. GETTER

2 A. Yes, they are.

3 Q. Is it your understanding that
4 the serial number for the subject cylinder
5 in this case is encompassed by those ranges
6 of serial numbers?

7 A. That is correct.

8 Q. Thank you. Now I would like to
9 take you back to your affidavit, so let me
10 know when you have that in front of you.

11 A. I do have it in front of me.

12 Q. Focus your attention to
13 paragraph nine of your affidavit. Do you
14 see that?

15 A. Yes, I do.

16 Q. All right. What was your
17 understanding as to what product was to
18 leave Worthington and go to Pyro Chem?

19 A. It was an empty cylinder per
20 the drawing, which was Exhibit 2.

21 Q. Did you have an understanding
22 as to whether the empty cylinder was to
23 include any labeling?

24 A. No, we supplied the cylinder in
25 accordance with Pyro Chem's requirements,

1 J. GETTER

2 and they were supposedly going -- they were
3 going to install the valve, put the product
4 in the cylinder, do the labeling, markings,
5 et cetera. That was part of their
6 responsibility.

7 Q. Did you provide an empty
8 cylinder without a label?

9 A. Yes; that's correct.

10 Q. Did you provide an empty -- did
11 you provide an empty cylinder with an open
12 top that then had a push plug placed in the
13 top?

14 A. That is correct.

15 Q. And what was the purpose of the
16 push plug?

17 A. It's to keep dirt and debris
18 out of the cylinder when it's being shipped
19 from our facility to theirs.

20 Q. What was your understanding as
21 to what Pyro Chem did with the cylinder
22 upon their receipt?

23 A. My understanding is this was a
24 component of their fire suppression system
25 and that they would be putting the fire

1 J. GETTER

2 suppression media in the cylinder,
3 installing the valve, pressurizing the
4 cylinder, putting all the labeling on it,
5 packaging it for shipping, et cetera, to
6 their customer.

7 Q. Other than providing the
8 cylinder itself what, if any, involvement
9 did Worthington have with that cylinder in
10 terms of providing it to the -- the
11 purchaser?

12 MR. ERGO: I am going to
13 object, vague and ambiguous.

14 Q. Take a look at paragraph
15 twelve. Do you see paragraph twelve?

16 A. Yes.

17 Q. Other than manufacturing the
18 cylinder and providing it to the purchaser
19 what, if any, involvement did Worthington
20 have?

21 A. None.

22 Q. Now, as part of Worthington's
23 DOT certification related to these types of
24 cylinders, was there a -- was there a
25 method in place by which Worthington would

1 J. GETTER

2 test a certain amount of cylinders?

3 A. Yes, as part of the DOT
4 specification.

5 Q. What was your understanding as
6 to what Worthington had done in this
7 respect?

8 A. In this respect, one out of
9 five hundred cylinders we pressurized to
10 900 PSI, or four times the marked service
11 pressure without rupture. We also tested
12 one out of two hundred cylinders to test
13 pressure, which is two times the marked
14 service pressure in a jacket or doing a
15 volumetric expansion test which measures
16 the amount of expansion for the cylinder.

17 And then we took the remainder
18 of each of those lots of cylinders, and we
19 tested them to two times the marked service
20 pressure of 450 PSI. We also took one of
21 two hundred cylinders and did the physical
22 testing, which is the tensile test, et
23 cetera, on the materials. That's all.

24 Q. Out of any of those test
25 measures that you just referenced, had any

1 J. GETTER

2 cylinder ever failed?

3 A. No.

4 Q. Can you describe for us how the
5 selection process would be to pick out the
6 very one cylinder out of every five hundred
7 cylinders or out of every two hundred
8 cylinders for those tests?

9 A. It's a random pulling of those.

10 Q. Do you know whether this
11 particular cylinder, the one that was
12 involved in this event in 2016, was ever
13 the randomly chosen cylinder for testing?

14 A. No, it was not, because random
15 tested cylinders are scrapped during the
16 test process.

17 Q. As part of -- withdrawn. Did
18 there come a time that you reviewed the
19 OSHA report regarding its inspection and
20 testing of this subject cylinder?

21 A. Yes, I did.

22 Q. I am just going to ask you some
23 questions about that. Why did you do that?

24 A. The report was given to me when
25 they were first discussing this cylinder

1 J. GETTER

2 and the accident, so the report was given
3 to me for my review. I was the one that
4 had knowledge of the design and
5 construction of these cylinders.

6 Q. As far as the methods employed
7 by OSHA related to its inspection and
8 testing of this subject cylinder, were you
9 familiar in terms of your experience with
10 the method of inspection and testing that
11 was done by OSHA?

12 A. Yes.

13 Q. Do you have personal experience
14 in doing those types of inspections and
15 testing that OSHA did in this case?

16 A. Certainly have been involved
17 with most of the testing that was involved
18 with this cylinder, whether through our own
19 R and D lab or some of the requirements
20 that I have directed. Certainly, the
21 tensile test, yield strength test of the
22 materials are tests that we do at our own
23 facility.

24 Q. Did you come to an
25 understanding as to why the cylinder

1 J. GETTER

2 ruptured in this case based upon your
3 review of the OSHA report?

4 MR. ERGO: Objection,
5 foundation, calls for expert
6 opinions.

7 MS. STIGALL: I, likewise,
8 object.

9 Q. You can answer, Mr. Getter.

10 A. The cylinder -- my opinion, the
11 cylinder ruptured because it was
12 overpressurized.

13 Q. Other than the -- other than
14 what you read in the OSHA report, do you
15 have any other basis for that?

16 A. Yes, based on looking at the
17 pictures of the cylinder after rupture,
18 those are indications that it was an
19 overpressurization failure.

20 Q. Other than the report and the
21 photos, do you have any other basis for
22 believing it was overpressurization?

23 MS. STIGALL: I have a
24 continuing objection.

25 Q. You can answer, Mr. Getter.

1 J. GETTER

2 A. I am not certain I understand
3 the question.

4 Q. You mentioned that you also
5 reviewed the photographs --

6 A. Correct.

7 Q. -- and that they corroborated
8 the overpressurization. Do you recall that
9 answer?

10 A. Yes.

11 Q. So you listed the report and
12 the photos. I am just trying to find out
13 if you looked at anything else.

14 A. No, I did not see anything
15 else.

16 (Thereupon, Plaintiff's Exhibit
17 No. 7, a thirteen-page document
18 titled Worthington Industries, Inc.'s
19 Response to Tyco Fire Products LP's
20 Request For Production of Documents,
21 was marked for purposes of
22 identification.)

23 Q. Now, can you take a look at the
24 exhibit that we have marked as Exhibit 7,
25 which was the Worthington response to

1 J. GETTER

2 certain document requests. I understand
3 that was provided by counsel. Let me know
4 when you have that.

5 A. I have that.

6 Q. I apologize if you have already
7 answered some of these questions earlier.
8 I will be brief, I promise.

9 A. Okay.

10 Q. As to request number one at
11 page three, do you see request number one
12 at page three?

13 A. Yes, I do.

14 Q. It requests agreements and
15 contracts essentially related to the
16 Worthington cylinder. I just want to
17 confirm, are you aware of any responsive
18 documents that would be in the possession
19 of Worthington now in 2018 related to the
20 agreements or contracts?

21 A. No, I am not.

22 Q. Other than the drawings you
23 provided, the inspection report and the
24 chemical analysis report -- I think I said
25 that correctly, let me double-check. Let

1 J. GETTER

2 me withdraw that question. Take a look at
3 request number seven. Let me know when you
4 see it.

5 A. I see it.

6 Q. Are you aware of any written
7 safety warnings or maintenance
8 recommendations or manuals that would have
9 gone with the Worthington cylinder?

10 A. There would not have been.

11 Q. So in terms of the actual
12 product, I know you have described it as a
13 -- as a cylinder. Would it go out to the
14 purchaser in a box?

15 A. It would have been bulk packed
16 on a pallet and stretch wrapped. So they
17 would have been --

18 Q. Traditionally --

19 A. Traditionally, there is --

20 Q. -- would there have been a --

21 A. I am sorry.

22 Q. Hold on, my bad. I apologize.
23 Did you complete your answer?

24 A. No, I said they would have been
25 stacked vertically on a wooden pallet and

1 J. GETTER

2 then stretch wrapped.

3 Q. Would there have been any
4 manual that went with it --

5 A. No.

6 Q. -- or with them?

7 A. No.

8 Q. And when I reference a manual,
9 I mean an instruction manual. Would there
10 have been any type of instruction manual to
11 the purchaser?

12 A. No.

13 Q. So other than the cylinders
14 themselves [sic], is it your understanding
15 that nothing else would have accompanied
16 the subject cylinders?

17 A. Beyond the packaging materials,
18 no, that would have been all.

19 Q. Take a look at request number
20 fifteen at page nine. Let me know when you
21 get there.

22 A. Request number fifteen on page
23 nine?

24 Q. Yes, sir. Yes, sir.

25 A. Fifteen would have been on page

1 J. GETTER

2 eleven.

3 Q. I have page nine, request
4 number fifteen related to photographs and
5 moving pictures. Do you see that?

6 A. It's on page eleven in what I
7 have.

8 Q. Fair enough. We might have
9 different paginations.

10 A. Yeah.

11 Q. So do you see request number
12 fifteen related to photographs and moving
13 pictures and videotapes?

14 A. Correct, I do.

15 Q. Are you aware of any
16 photographs or videos related to these
17 subject cylinders that date back to the
18 time of the inspections and the revisions
19 and things of that nature?

20 A. No.

21 Q. What was your answer?

22 A. No, there was none taken that I
23 am aware of.

24 Q. Okay. And now fast forwarding
25 to approximately April 16th of 2018, I want

1 J. GETTER

2 you to assume that there was an inspection
3 of the remnants of the cylinder in New York
4 City. Do you -- do you or have you been
5 shown any of the photographs from an
6 inspection of the cylinder?

7 A. Yes, I have a copy of the OSHA
8 report that shows the photos that were
9 taken at the accident.

10 Q. Let me rephrase. As part of
11 the litigation, I would ask you just to
12 assume that the attorneys met in New York
13 City in 2018 with certain representatives
14 to take photographs and video at their
15 choosing of the product or the remnants of
16 the product. Have you seen any of that?

17 A. I have seen the pictures of
18 that that were taken at that time.

19 Q. Have you seen any video,
20 assuming there was video?

21 A. No, I have not. I have only
22 seen pictures.

23 (Thereupon, Plaintiff's Exhibit
24 No. 6, a printout, was marked for
25 purposes of identification.)

1 J. GETTER

2 Q. Now, take a look at Exhibit 6.

3 I forgot to ask you about that. Let me
4 know when you have it in front of you.

5 A. Exhibit 6 was which document?

6 Q. It's a -- it's a receipt or a
7 printout of some kind, and that is a little
8 bit difficult to read.

9 A. Oh, yes.

10 MS. STIGALL: Yeah. And for
11 the record, I will just say I really
12 can't read it at all. I can read the
13 few lines that are at the bottom
14 dark.

15 THE WITNESS: The -- if you
16 would have printed it on large paper
17 in black and white, it's a little bit
18 more readable.

19 Q. Understood.

20 A. I have it in front of me in
21 black.

22 Q. Let me just ask you -- let me
23 just lay the foundation. Do you have
24 Exhibit 6 in front of you?

25 A. Yes, I do.

1 J. GETTER

2 Q. Do you have a corresponding
3 document that you printed on your own for
4 purposes of the deposition that is a little
5 bit more legible?

6 A. Yes, I do.

7 Q. Is it an exemplary copy of
8 Exhibit 6?

9 A. Yes, it was printed from the
10 same e-mail.

11 Q. Okay. I would ask that you
12 preserve it. Don't destroy it. Give it to
13 counsel, okay?

14 A. Okay.

15 Q. All right. So what is Exhibit
16 6?

17 A. This is the report of the
18 physical testing that was completed on
19 those lots of cylinders.

20 Q. Is there a particular place on
21 this report that references the actual
22 subject cylinder involved in this event?

23 A. Yes.

24 Q. Can you help us find it?

25 A. Yes, the serial number range --

1 J. GETTER

2 it would have been the very top one, the
3 very first one in the line.

4 Q. And how is it that you are able
5 to identify it, is it by serial number?

6 A. By serial number, correct.

7 Q. Can you read out the serial
8 number?

9 A. It's difficult for me to read
10 also. It appears to be 0025801AD through
11 -- and I cannot read the rest of it. The
12 next line is not readable. But that would
13 have been that first section for it.

14 Q. In the absence of having a
15 clearly legible copy, is there any other
16 way to confirm and corroborate that this
17 report related to the testing that would
18 apply to the subject cylinder?

19 A. No, it's all based on serial
20 number.

21 Q. And are there certain columns
22 following the serial number that
23 corroborate the testing for the cylinder?

24 A. Yes.

25 Q. And are you able to go through

1 J. GETTER

2 the columns with us and identify what type
3 of testing was done?

4 A. Yes.

5 Q. So, for example, whether it's a
6 tensile test or a burst test, those are
7 referenced in the columns?

8 A. Yes, they are.

9 Q. All right. Take us through the
10 -- because of the difficulty in reading it,
11 I need you to educate us on the columns
12 across the page, what -- what tests are
13 included. So what is the first test?

14 A. The first test is a tensile
15 test.

16 Q. And you are spelling that
17 T-E-N-S-I-L-E, correct?

18 A. That is correct.

19 Q. And what is it about the
20 tensile test in this case in terms of the
21 results that are reflected?

22 A. In this case, the -- we pull a
23 tensile test of the top head, the bottom
24 head, the side wall of the cylinder, and
25 also through the longitudinal weld of the

1 J. GETTER

2 cylinder. In the case of this cylinder, in
3 accordance with DOT requirements, that
4 minimum number is seventy thousand. In
5 this report, the lowest number is
6 seventy-nine thousand four hundred. So the
7 actual tensile test exceeded the DOT
8 minimum requirements.

9 The next column is the yield
10 strength of the material, and that would
11 have been on the top head, the bottom head,
12 and the sidewall. And DOT only requires
13 that you record this number, it does not
14 provide a minimum. The next column is the
15 elongation for the material. And I cannot
16 read the numbers of what's on my report.

17 The next column, when you do a
18 tensile test, you have a reduced area that
19 you measure, and that's what that number
20 represents is the area of the reduction
21 from the tensile testing. The next column
22 is a weld or bend test on the material.
23 You do a bend test to prove that the
24 material was laudable. In the case of
25 this, it said pass.

1 J. GETTER

2 The next column where we put a
3 value in for these cylinders is a burst
4 test pressure. And it shows we took these
5 -- this cylinder up to 900 PSI without
6 failure. The next column is the volumetric
7 expansion test I described, which we took
8 those up to 400 PSI.

9 And the next columns talk about
10 the amount of expansion that the cylinders
11 saw, so it was 8 CC total expansion. There
12 was two CC of permanent expansion. And we
13 are allowed 91 CC of permanent expansion,
14 so it met its requirements. The next
15 column, I -- the rest of the columns, I
16 cannot read what they are saying.

17 Q. And was that the final column?

18 A. Yes.

19 MR. FROMSON: All right. Thank
20 you, Mr. Getter. I don't have any
21 other questions at this time. Other
22 people on the phone may very well.
23 Thank you.

24 MR. ERGO: Okay, this is Rich
25 Ergo. I have to take a break because

1 J. GETTER

2 I have to drive someone somewhere,
3 but I am going to get right back.
4 You know, give me -- if we can take,
5 like, ten minutes and resume?

6 MS. STIGALL: Why don't we go
7 ahead and take fifteen, and then we
8 will have plenty of time because I
9 know you probably want to print out
10 what I sent also.

11 MR. DONEY: Yes.

12 THE VIDEOGRAPHER: We are off
13 the record.

14 (Recess taken.)

15 THE VIDEOGRAPHER: We are on
16 the record.

17 CROSS-EXAMINATION BY

18 MS. STIGALL:

19 Q. Mr. Getter, my name is Sandy
20 Stigall. I represent Tyco Fire Products,
21 LP, who is a defendant in the present
22 action. I wanted to start off by
23 clarifying, the defendant in the present
24 action is Worthington Industries. Are you
25 an employee of Worthington Industries or

1 J. GETTER

2 are you an employer -- employee of
3 Worthington Cylinders Corp.?

4 A. An employee of Worthington
5 Industries. Worthington Cylinders is a
6 part of Worthington Industries.

7 Q. Okay. Would you agree with me
8 that Worthington Industries is one of the
9 largest steel processors in the United
10 States?

11 A. I believe that's true.

12 MR. ERGO: Foundation.

13 Q. Okay. And that -- am I correct
14 that Worthington Cylinders is one of the
15 segments of Worthington Industries?

16 MR. ERGO: Objection, vague,
17 ambiguous, foundation, calls for a
18 legal conclusion.

19 Q. Well, is Worthington Cylinders
20 under the umbrella without getting into the
21 legalities of it of Worthington Industries?

22 MR. ERGO: The same objection,
23 but you can answer.

24 MR. DONEY: You can go ahead
25 and answer.

1 J. GETTER

2 THE WITNESS: I'm sorry, yes.

3 (Thereupon, Defendants' Exhibit
4 No. 8, an eight-page document titled
5 Manufacturing Today, was marked for
6 purposes of identification.)

7 Q. And I had pulled some things
8 from the Internet. One of the things I
9 pulled was this article. This is from
10 Manufacturing Today that is Defendants'
11 Exhibit 8?

12 A. Yes.

13 Q. And in the article, it notes
14 that Worthington Cylinders is the world's
15 leading manufacturer of -- and supplier --
16 of pressure cylinders with around twenty
17 percent of the total global market. Does
18 that sound like a good estimate to you in
19 terms of your knowledge of the company that
20 you work for?

21 MR. ERGO: Foundation, calls
22 for speculation.

23 THE WITNESS: I don't know the
24 size of our company and what
25 percentage we distribute.

1 J. GETTER

2 Q. So sitting here today, you
3 don't have any idea of an estimate of the
4 percentage of the world market that your
5 employer has in the area of the cylinders;
6 is that correct?

7 A. That is correct.

8 Q. Do you know how many plants
9 Worthington Cylinders has that manufacture
10 pressure cylinders?

11 A. Worthington Cylinders has --
12 the pressure cylinder group has I believe
13 twenty-six facilities. I am not certain
14 how many are making other than pressure --
15 I am guessing it's somewhere around
16 twenty-two to twenty-three, twenty-two or
17 twenty-three facilities make pressure
18 cylinders.

19 Q. Okay. And some of those are in
20 the United States, and some are in foreign
21 countries, including Austria, US, Canada,
22 Portugal, and the Czech Republic; is that
23 correct?

24 A. We do not have a facility in
25 Canada.

1 J. GETTER

2 Q. Oh, okay.

3 A. We do not have a facility in
4 Czech Republic. The only international
5 facilities that we have are in Austria,
6 Poland, and Turkey.

7 Q. Not Portugal?

8 A. Excuse me, Portugal also, I am
9 sorry.

10 Q. Okay. The bottom line is this
11 is a big outfit, correct?

12 A. Pardon?

13 MR. ERGO: Vague, ambiguous.

14 Q. You may answer.

15 A. I missed the question, if you
16 can --

17 Q. Would you agree with me that it
18 is a big company that you work for?

19 MR. ERGO: The same objection.

20 THE WITNESS: I mean, big is a
21 --

22 Q. And would you agree that
23 Worthington Cylinders, that their specialty
24 is manufacturing and supplying pressure
25 cylinders?

1 J. GETTER

2 A. Pressure cylinders, yes.

3 Q. And was a pressure cylinder
4 what you were testifying about supplying to
5 Pyro Chem as related to this case?

6 A. Yes, a pressure cylinder only.

7 Q. Do you -- do you manufacture
8 pressure cylinders for a number of
9 different clients?

10 A. Can you be specific on what you
11 mean by clients? Are you --

12 Q. Well, tell me the types of
13 pressure cylinders that your company
14 produces for buyers or clients.

15 A. It's a large number of products
16 we make. We make propane cylinders. We
17 make refrigerant cylinders, fire
18 suppressant cylinders, acetylene cylinders,
19 high pressure gas cylinders, cryogenic type
20 cylinders and tanks, a lot of different
21 specialty gas cylinders and tanks.

22 Q. Say over the past fifteen
23 years, what companies has Worthington
24 manufactured and sold fire suppressant
25 cylinders for?

1 J. GETTER

2 MR. ERGO: I'll pose an
3 objection, but only to the extent
4 that Worthington considers those
5 customers -- the names and identities
6 proprietary. If they don't, then I
7 will allow the witness to answer. If
8 they do, then I will instruct him not
9 to answer.

10 MR. DONEY: We do consider
11 those proprietary. She is asking for
12 our customers.

13 THE WITNESS: Yes.

14 MS. STIGALL: So you are
15 instructing him not to answer?

16 MR. DONEY: I think so, unless
17 you want to narrow it down more to
18 where Jim is comfortable that it's
19 well-known that we supply them. But
20 if it's not well-known to the world
21 that we supply them, then that's
22 proprietary information.

23 THE WITNESS: Because in most
24 cases, fire suppressant customers are
25 proprietary. Designs are

1 J. GETTER

2 proprietary, et cetera.

3 Q. And I understand that the
4 design would be proprietary. I guess I am
5 asking you when you design fire suppression
6 cylinders for companies, do you consider
7 the identity of those companies proprietary
8 or confidential?

9 A. I have always treated it that
10 way, yes.

11 MS. STIGALL: What we will do
12 is just go ahead and mark this for
13 now, and we can decide if I want to
14 pursue it further in the future,
15 given that there is the objection.

16 Q. In your business of
17 manufacturing pressurized cylinders for
18 various industrial users, do you sometimes
19 provide labels with the tanks you sell?

20 A. We do on cylinders that are
21 finished products ready to fill. In this
22 case, this was a cylinder that was not
23 ready to fill. It was a part of -- it was
24 going to be a part of a system in that it
25 was Pyro Chem's responsibility to complete

1 J. GETTER

2 the system.

3 Q. And in your role concerning
4 that process, when you are dealing with a
5 cylinder that Worthington is not providing
6 the label, does Worthington as a normal
7 practice inquire about the contents of the
8 label that will be affixed on the cylinder?

9 A. No.

10 MR. ERGO: I am going to object
11 to the extent that calls for
12 speculation, lacks foundation.

13 Q. Okay. Mr. Getter, you
14 testified earlier about a certain agreement
15 between your employer and Pyro Chem
16 concerning the label on the cylinder at
17 issue, correct?

18 A. Yes.

19 Q. Have you worked with other
20 manufacturers when labels are not to be
21 included as a part of the end product of
22 the pressurized cylinder?

23 A. Could you rephrase the
24 question? I am not certain I understand
25 your question.

1 J. GETTER

2 Q. Okay. Other than the instance
3 in this case where you have testified that
4 you were working with Pyro Chem concerning
5 the cylinder and your testimony concerning
6 whether or not a label was supposed to be
7 included, have you over your tenure at
8 Worthington Cylinders worked with other
9 clients in designing, manufacturing,
10 selling them cylinders where labels are not
11 affixed?

12 A. Yes.

13 Q. By Worthington?

14 A. Yes.

15 Q. When that has happened, in your
16 experience, do you inquire about what's
17 going to be put on the label in the end?

18 A. No.

19 Q. Do you make any recommendations
20 based upon your experience working at
21 Worthington Cylinders concerning what
22 should be affixed on the label by your
23 client after it leaves your plant?

24 A. No, because --

25 MR. ERGO: I am going to

1 J. GETTER

2 object, an incomplete hypothetical.

3 MR. DONEY: Go ahead.

4 Q. I didn't hear his answer. I am
5 sorry if he answered.

6 A. I am always unsure when I am
7 supposed to answer or not. The -- on all
8 of the cylinders like this that we are not
9 supplying or doing anything with a label,
10 it is cylinders that are part of a system
11 similar to this for fire suppression. In
12 all of these cases, the fire suppression
13 system manufacturer is far more experienced
14 than us in what is required for warnings,
15 instructions of the system, et cetera.

16 MS. STIGALL: Okay. And I -- I
17 think I would strike that answer as
18 nonresponsive.

19 Q. Let me ask my question again.

20 A. Okay.

21 Q. In your experience, when you
22 are working with a client in providing a
23 pressurized cylinder where Worthington is
24 not providing the label, and you said you
25 have done that, do you inquire about what

1 J. GETTER

2 will be placed on the label after the
3 cylinder leaves Worthington?

4 MR. DONEY: Asked and answered.

5 MR. ERGO: I am going to
6 object, asked and answered, but you
7 can answer again. But the objection
8 stands.

9 THE WITNESS: Okay. Well, you
10 know, I answered no originally, and
11 then I qualified the answer, and the
12 answer being on fire suppression
13 systems or cylinders, we are not the
14 expert on what warnings or labeling
15 should be on the cylinder. That is
16 always up to the manufacturer of the
17 fire suppression system.

18 Q. So I understand you are
19 qualifying, but do you inquire about what
20 that label is going to be?

21 A. No.

22 MR. ERGO: Asked and answered.

23 Q. Okay. Do you know what a label
24 on a Kitchen Knight 2 system tank contains?
25 Do you know what's on that label --

1 J. GETTER

2 A. No, I --

3 Q. -- as far as the time frame
4 when this tank was manufactured?

5 A. No, I have not seen the label.

6 Q. In looking at the exhibits that
7 were -- well, let me ask you a question.
8 What is -- one second. I am looking
9 through my notes. What is CGA, space,
10 CG-7?

11 A. CGA is the Compressed Gas
12 Association, and CG-7 is a relief device, a
13 spring loaded relief device.

14 Q. CG-7?

15 A. CG-7 is a type of pressure
16 relief device. It's a spring loaded relief
17 device.

18 Q. Does Worthington manufacture
19 cylinders used in cascade systems?

20 A. Not that I am aware of.

21 MR. ERGO: Objection,
22 foundation.

23 (Thereupon, Defendants' Exhibit
24 No. 11, a document titled Mobile SCBA
25 Refill/Cascade Cylinders, was marked

1 J. GETTER

2 for purposes of identification.)

3 Q. Well, if you will look at what
4 was marked Defendants' Exhibit 11, it says
5 mobile SCBA refill, slash, cascade
6 cylinders. And this is off the Worthington
7 website. Do you do any work concerning
8 cascade cylinders?

9 A. No, I do not.

10 Q. Would you know whether the
11 cascade cylinder used on -- or do you know
12 whether the cascade cylinder that was used
13 on the Poseidon system to fill the cylinder
14 at issue in this case is a Worthington
15 product?

16 A. I do not know that. I have not
17 seen pictures of those cylinders.

18 Q. Could I direct your attention
19 to the last exhibit?

20 (Thereupon, Defendants' Exhibit
21 No. 12, a color copy of a photograph,
22 was marked for purposes of
23 identification.)

24 Q. I think it's --

25 A. Yes.

1 J. GETTER

2 Q. -- Exhibit 12. And I will
3 grant you, it is not a very good picture of
4 the Poseidon cascade system. But you can
5 see in that photograph the Poseidon
6 compressor. And then on the back, you can
7 barely see there are some yellow tanks
8 affixed to that compressor. Sitting here
9 today, do you know whether those tanks are
10 Worthington tanks?

11 A. I have -- I would have --

12 MR. ERGO: I am going to
13 object, foundation, it calls for
14 speculation.

15 THE WITNESS: I would have no
16 idea what the tank is without seeing
17 the markings on it.

18 MS. STIGALL: Okay, that's
19 fair. Yeah, and I understand the
20 objection because we have not been
21 able to get in and see those yet, and
22 we won't be able to -- we aren't
23 getting in there until later on next
24 month, but I still wanted to check on
25 that after seeing that you all

1 J. GETTER

2 manufactured some of those.

3 Q. Have you ever had your
4 deposition taken before?

5 A. No, this is my first.

6 Q. And you said you are not a
7 professional engineer?

8 A. No, I am not.

9 MR. ERGO: Objection,
10 mischaracterizes testimony.

11 Q. Are you a person with the
12 degree of a professional engineer, PE?

13 MR. ERGO: Objection, vague and
14 ambiguous.

15 THE WITNESS: No, I am not.

16 Q. Do you have a degree that
17 qualifies you as a licensed mechanical
18 engineer?

19 A. No, I do not.

20 MR. ERGO: The same objection.

21 THE WITNESS: And no, I do not.

22 Q. I am just looking over my notes
23 here. In your affidavit, you mentioned
24 that Pyro Chem contacted you concerning the
25 type of cylinder at issue. Is it your

1 J. GETTER

2 testimony that they contacted you
3 personally?

4 A. Yes, they did.

5 Q. Who did you speak with from
6 Pyro Chem?

7 A. I don't remember his name. He
8 was the engineer responsible for the
9 systems, fire suppression systems.

10 Q. Was he out of Boonton, New
11 Jersey, at that time?

12 A. Yes.

13 Q. Did you ever have contact with
14 anyone out of the Marinette, Wisconsin,
15 location concerning these types of
16 cylinders?

17 A. I visited a Marinette facility
18 after Marinette started producing these
19 tanks themselves. I met several of the
20 Marinette people at the Jefferson facility
21 prior to them starting to make their own
22 tanks.

23 Q. So you -- you have been both to
24 the Boonton location and the Marinette
25 location?

1 J. GETTER

2 A. I was at the Boonton facility
3 before I worked for Worthington. I was at
4 the Marinette facility after the Marinette
5 facility started producing their own --
6 producing these themselves.

7 Q. Who did you work for when you
8 went to the Boonton facility?

9 A. Press Steel Tank in Milwaukee,
10 Wisconsin.

11 Q. Had they previously made tanks
12 for Pyro Chem?

13 A. Yes. They made tanks for Pyro
14 Chem before I started working for them.

15 Q. Okay. And then at some point,
16 that business went over to Worthington?

17 A. That is correct.

18 Q. Did it go over because you
19 moved to Worthington?

20 MR. ERGO: Objection.

21 Q. Did it follow you?

22 MR. ERGO: Calls for
23 speculation.

24 Q. If you know.

25 A. No, they -- they were having

1 J. GETTER

2 supply issues out of Pressed Steel Tank,
3 and they contacted me to see if where I
4 moved to could make tanks for them or
5 cylinders for them.

6 Q. And for clarity, was that
7 Pressed Steel Tank?

8 A. Correct. P-R-E-S-S-E-D, space,
9 Steel, S-T-E-E-L, space, Tank, T-A-N-K.

10 Q. Can you remember the name of
11 anyone at Pyro Chem either in Boonton or in
12 Marinette with whom you worked concerning
13 these particular types of tanks?

14 A. No, I do not remember. That's
15 been too many years ago.

16 Q. Was there anyone else at
17 Worthington whose name you remember who
18 worked at Worthington concerning these
19 particular tanks?

20 A. There is no one that's still
21 here at Worthington that I worked with in
22 the design of these.

23 Q. Number nine of your affidavit,
24 you say per the agreement between TFP and
25 Pyro Chem -- or with TFP and Pyro Chem, I

1 J. GETTER

2 am sorry. Do you have any copy of any
3 agreement between TFP or Pyro Chem and
4 Worthington? Have you located any
5 concerning --

6 A. Not.

7 Q. -- this cylinder, type of
8 cylinder?

9 A. No, I have not.

10 Q. Do you remember ever seeing any
11 written agreements between the two
12 outlining what their various
13 responsibilities were concerning labeling?

14 A. Written, I do not. It was all
15 verbal discussion.

16 Q. And you were part of that
17 verbal discussion?

18 A. Yes, I was.

19 Q. Is that right?

20 A. Yes, I was.

21 Q. And then the discussion that
22 you had, was it with someone at Boonton or
23 someone at Marinette?

24 A. Boonton, Boonton or however you
25 pronounce it.

1 J. GETTER

2 Q. Yeah, I am never too sure
3 myself, I understand. Am I correct then
4 that you did not draw the design for these
5 tanks, but you approved it?

6 A. I directed the drawing of them.
7 I did not make the drawing itself. And
8 then, yes, I did approve them.

9 Q. Did you ever make any
10 recommendations to Pyro Chem concerning
11 labeling of the tanks?

12 A. No.

13 Q. Without telling me the names of
14 other fire suppression companies that your
15 company makes pressurized cylinders for,
16 would it be correct that typically when you
17 manufacture and sell them those cylinders,
18 those other companies, that the cylinders
19 do not have a label on them?

20 A. None of those cylinders have a
21 label when they leave our facility. In all
22 cases, the customer has told me that they
23 will be supplying and installing the label.

24 (Thereupon, Defendants' Exhibit

25 No. 9, a three-page document titled

1 J. GETTER

2 Fire Suppression, was marked for
3 purposes of identification.)

4 Q. Okay. And so looking at
5 Defendants' Exhibit 9, I see a number of
6 different sizes of red fire suppression
7 tanks.

8 A. Yes.

9 Q. Would the only -- is that what
10 they look like when they go to other
11 customers?

12 MR. ERGO: Objection,
13 foundation.

14 THE WITNESS: If you are
15 referring to the seamless fire
16 extinguisher brochure, those are
17 cylinders that are made out of our
18 Austrian facility, not --

19 Q. I am sorry, I was talking about
20 Exhibit 9, the one that says fire
21 suppression.

22 A. Okay, I am sorry. That's
23 typically what they look like, yes.

24 Q. And is it your testimony here
25 today that as the world's leading

1 J. GETTER
2 manufacturer and supplier of pressure
3 cylinders that you do not make any
4 recommendations to your customers
5 concerning how those pressurized cylinders
6 should be filled?

7 MR. ERGO: I am going to
8 object. It's asked and answered.
9 It's argumentative, and it assumes
10 facts not in evidence.

11 MS. STIGALL: This was a more
12 specific question.

13 Q. As an employee of one of the
14 world's leading manufacturers and suppliers
15 of pressure cylinders, when you manufacture
16 and supply fire suppression cylinders to
17 companies, for companies, do you make any
18 recommendations concerning how those
19 cylinders should be filled?

20 MR. ERGO: The same objections,
21 with an emphasis on the asked and
22 answered.

23 THE WITNESS: So am I supposed
24 to answer?

25 MR. DONEY: Yeah.

1 J. GETTER

2 THE WITNESS: Okay.

3 MR. ERGO: No, you answer
4 again.

5 THE WITNESS: Okay. We -- we
6 do not do any of the labeling on any
7 of the fire suppression cylinders.
8 The fire suppression cylinder company
9 is a far better expert than us at the
10 system. We are considered an expert
11 on the cylinder itself, not fire
12 suppression systems.

13 Q. I understand. As an expert,
14 your company -- on pressurized cylinders,
15 when you sell these cylinders, do you make
16 any recommendations to your customers
17 concerning how the cylinders should be
18 filled?

19 MR. ERGO: Objection, asked and
20 answered.

21 MS. STIGALL: He hasn't
22 answered it.

23 MR. ERGO: I will allow him to
24 answer it for I believe the fourth or
25 fifth time. After that, I am going

1 J. GETTER

2 to consider seeking a protective
3 order.

4 MS. STIGALL: Okay.

5 THE WITNESS: No.

6 Q. And so the question is do you
7 make any recommendations to these users
8 about how the tanks should be filled?

9 A. No. I don't know how they are
10 filled.

11 Q. Are you aware of any other
12 incidents of burst tanks as related to the
13 product at issue, which is these tanks that
14 Worthington manufactures for Pyro Chem?

15 A. I am not aware of any burst
16 failures, if that's the question.

17 Q. Yes, yes, that's what my
18 question is, concerning these tanks.

19 A. I am not aware of any burst
20 failures.

21 (Thereupon, Defendants' Exhibit
22 No. 10, a Worthington Industries
23 document, was marked for purposes of
24 identification.)

25 Q. Okay. And I am a little

1 J. GETTER

2 confused because Exhibit 10, you started to
3 look at that. What are -- are these fire
4 extinguisher cylinders that I see a
5 photograph on Exhibit 10 or is that
6 something else?

7 A. Those are cylinders -- this is
8 the first time I have seen this document or
9 this picture. But these appear to be
10 pictures out of our Austrian facility.
11 They are a seamless cylinder. And they
12 would be for a high pressure system, as you
13 can see by the table, the pressures. You
14 know, 200 and 300 bar is a very high
15 pressure. So it would be certainly for a
16 different application. I am not certain
17 what those are.

18 Q. So it's a much higher pressure
19 than the tank we are talking about here or
20 the cylinder we are talking about here,
21 correct?

22 A. Significantly higher pressure.

23 Q. Thank you.

24 MS. STIGALL: I am going to
25 look over my notes. I am probably

1 J. GETTER

2 finished, if you can just bear with
3 me for a second. Or if someone else
4 has questions, that's fine. I don't
5 have any more questions.

6 MR. ERGO: Ken, do you have
7 more questions?

8 MR. FROMSON: No, I don't have
9 any questions, thanks.

10 DIRECT EXAMINATION BY

11 MR. ERGO:

12 Q. All right, I just have one
13 question. The inspection report, which
14 exhibit is it? Exhibit 4, could you turn
15 to that, Mr. Getter?

16 A. Yes.

17 Q. There is a reference down
18 towards the bottom to CGA -- CG-7?

19 A. Correct.

20 Q. Is that a mistake?

21 A. Yes, that is a mistake on this
22 report.

23 Q. Could you explain that?

24 A. Typically, every -- typically
25 finished cylinders we produce have a relief

1 J. GETTER

2 device. And in this case, it's a typo
3 error, basically a copy and paste error for
4 this report.

5 Q. Did you supply this cylinder
6 with a relief valve?

7 A. No, we do not.

8 Q. Were you asked to?

9 A. No, we were not.

10 MR. ERGO: All right, thank
11 you. No further questions.

12 MR. DONEY: Yeah, I do want --

13 MR. FROMSON: This is Ken
14 Fromson. I have a question.

15 MR. DONEY: Go ahead.

16 RECROSS-EXAMINATION BY

17 MR. FROMSON:

18 Q. In the event that the
19 typographical error that you described, if
20 it was not to be CG-7, was there some other
21 acronym or abbreviation that was supposed
22 to be there?

23 A. No, there was not. It should
24 have -- the answer would have been none for
25 this application.

1 J. GETTER

2 MR. FROMSON: Thank you.

3 MR. DONEY: This is Tim Doney.

4 I guess I do have one question, just

5 for clarification of the question

6 Sandy was asking.

7 DIRECT EXAMINATION BY

8 MR. DONEY:

9 Q. When you indicated that you
10 don't communicate with the customers about
11 how they should fill it or the other stuff,
12 but what -- what is stamped on these tanks
13 when they go to the customer?

14 A. What is stamped on the tank is
15 the DOT required markings. And the
16 markings, like we have talked about, have
17 the DOT 4BW 225, 225 being -- well, let me
18 back up. The DOT 4BW being the type of
19 cylinder, the 225 being the maximum
20 allowable working pressure or service
21 pressure for the application. The serial
22 number is on there so that you know -- so
23 you can tie it back to its inspector's
24 report. The manufacturer's symbol, the
25 inspector's symbol, et cetera are on there,

1 J. GETTER

2 along with the test date.

3 Q. Okay. So Tyco and -- Tyco
4 understands what all those numbers mean,
5 especially the pressure limitations?

6 A. They most certainly, since they
7 are all --

8 MS. STIGALL: Objection, form
9 and foundation.

10 Q. Okay. Let me -- how do I say
11 that in a way I won't get objected to?
12 Does Tyco understand what those numbers
13 mean?

14 A. Tyco certainly should, as they
15 are a manufacturer of these same cylinders.

16 Q. Okay. So they know -- does
17 Tyco know what the pressure rating is on
18 the cylinders we provide them?

19 A. Yes.

20 MS. STIGALL: Objection, form
21 and foundation, same objection.

22 MR. DONEY: Okay. That's all I
23 have.

24 MR. FROMSON: This is Ken
25 Fromson. I don't have any further

1 J. GETTER

2 questions.

3 MS. STIGALL: No more here.

4 THE VIDEOGRAPHER: We are off
5 the record.

6 MR. FROMSON: Ken Fromson for
7 Plaintiff. I will take an
8 E-transcript and, obviously, a final
9 certified copy with a signature on
10 it, and that's all I need. I do not
11 need to order the video at this time,
12 unless we go to trial, at which time
13 I will order it prior to trial.

14 MS. STIGALL: E-transcript for
15 Sandy Stigall, please.

16 MR. ERGO: Yeah, for
17 Worthington, we will take an
18 E-transcript and a hard copy. I
19 would like the exhibits.

20 MS. STIGALL: Same here. This
21 is Sandy Stigall.

22 MR. FROMSON: Please provide a
23 copy of the exhibits.

24 * * *

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J. GETTER

(Whereupon, at 12:26 P.M., the
Examination of this witness was
concluded.)

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J. GETTER

D E C L A R A T I O N

I hereby certify that having been
first duly sworn to testify to the truth, I
gave the above testimony.

I FURTHER CERTIFY that the foregoing
transcript is a true and correct transcript
of the testimony given by me at the time
and place specified hereinbefore.

JAMES M. GETTER

Subscribed and sworn to before me
this ____ day of _____ 20__.

NOTARY PUBLIC

1 J. GETTER

2 E X H I B I T S

3

4 PLAINTIFF'S EXHIBITS

5

6 EXHIBIT EXHIBIT PAGE

7 NUMBER DESCRIPTION

8 1 Affidavit of Jim Getter 6

9 2 and 3 Worthington Cylinder
10 drawings, Bates labeled
11 WORTH00001 and
12 WORTH00002 22

13 4 Inspector's Report 31

14 5 Record of Chemical
15 Analysis of Material
16 For Cylinders 34

17 7 Worthington Industries,
18 Inc.'s Response to Tyco
19 Fire Products LP's Request
20 For Production of
21 Documents 43

22 6 A printout 49

23 (Continued on the following page.)

24

25

1 J. GETTER

2 DEFENDANTS' EXHIBITS

3	EXHIBIT	EXHIBIT	PAGE
4	NUMBER	DESCRIPTION	
5	8	Manufacturing Today	57
6	11	Mobile SCBA Refill/Cascade	
7		Cylinders	67
8	12	Color copy of a	
		photograph	68
9	9	Fire Suppression	76
10	10	Worthington Industries	
11		document	80

12 (Exhibits retained by Court Reporter.)

13 I N D E X

14	EXAMINATION BY	PAGE
15	MR. FROMSON	5, 83
16	MS. STIGALL	55
17	MR. ERGO	81
18	MR. DONEY	83

19

20

21 INFORMATION AND/OR DOCUMENTS REQUESTED

22 INFORMATION AND/OR DOCUMENTS PAGE

23 (None)

24

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STATE OF OHIO)
 : SS.:
COUNTY OF MONTGOMERY)

I, MONICA K. MCBEE, a Notary Public
for and within the State of Ohio, do hereby
certify:

That the witness whose examination is hereinbefore set forth was duly sworn and that such examination is a true record of the testimony given by that witness.

I further certify that I am not related to any of the parties to this action by blood or by marriage and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 8th day of August 2018.

Monica McBee

MONICA K. MCBEE